IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.7050 OF 2007

Commissioner of Central Excise &
Customs Nasik ...Petitioner

Vs.

M/s.D.J. Malpani ...Respondent

Mr. R.V. Desai, Senior Counsel with Mr. A.S. Rao, for the Petitioner

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED : 11TH OCTOBER 2007

P.C.

. The present petition seeks to set aside the impugned order dated 29th September, 2006 or alternatively expunging certain remarks in the said order. We have perused the impugned order. There is no disparaging remark. The only remark is as under:-

> "Therefore, while waiving pre-deposit of duty and penalty and staying recovery thereof pending the Appeal, we also direct copy of this order be forwarded to the Central Board of Excise and Customs for information and further action."

. This statement was made as the Tribunal found that on remand an order was passed which was patently in defiance of the Tribunal's remand order which had accepted the assessee's contention that benefit of cum duty price was available to them.

. Today when the matter comes up for hearing Shri F.M.Jaswal has filed an affidavit tendering unconditional apology and prays that the direction to refer the matter for CBDT be expunged.

. Every Tribunal and/or quasi judicial authority which in the hierarchy is subordinate to the Tribunal is bound to comply with the direction. If any party is aggrieved by an order the remedy is to prefer an Appeal. A lower authority cannot go against the order of remand issued by the higher Appellate Authority. In fact it is bound by the terms of the remand order and cannot go beyond the terms of the order of remand.Judicial discipline requires that this system which has been followed in our judicial system must be maintained by all judicial and quasi judicial authorities However, considering the unconditional apology tendered today the directions as contained in order dated 29th September,2006 to the extent quoted by us earlier are expunged. With the above direction petition disposed of.

(J.P. DEVADHAR, J.) **(F.I. REBELLO, J)**